

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANNIE L. MZYK, §
Plaintiff, §
§
v. § CIVIL ACTION NO.
§ SA-14-CA-0952-HLH
NORTH EAST INDEPENDENT §
SCHOOL DISTRICT, §
Defendant. §

DEFENDANT'S ORIGINAL ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTER-CLAIM

TO THE HONORABLE HARRY LEE HUDSPETH, U.S. DISTRICT COURT JUDGE:

Defendant North East Independent School District (“NEISD” or the “District”), files this Original Answer, Affirmative Defenses, and Counter-Claim in response to Plaintiff Annie L. Mzyk’s (“Plaintiff”) Original Complaint in the matter referenced above as follows:

I. ORIGINAL ANSWER

1. NEISD admits that this Court has jurisdiction based on the items checked in Paragraph 1 of Plaintiff’s Original Complaint (“Plaintiff’s Complaint”), to the extent that Plaintiff’s Complaint raises questions applying federal law.
2. NEISD admits the factual allegations contained in Paragraph 2 of Plaintiff’s Complaint.
3. NEISD admits the factual allegations contained in Paragraph 3a of Plaintiff’s Complaint.
4. NEISD admits the factual allegations contained in Paragraph 3b of Plaintiff’s Complaint.

5. NEISD denies the factual allegations contained in Paragraph 4 of Plaintiff's Complaint.

6. NEISD admits the factual allegations contained in Paragraph 5 of Plaintiff's Complaint.

7. NEISD admits that the Equal Employment Opportunity Commission ("EEOC") issued Plaintiff a Right to Sue letter dated July 30, 2014. NEISD does not have sufficient information or knowledge to admit or deny the remaining factual allegations contained in Paragraph 6a of Plaintiff's Complaint.

8. NEISD denies the factual allegations contained in Paragraph 6b of Plaintiff's Complaint.

9. NEISD denies the factual allegations contained in Paragraph 7 of Plaintiff's Complaint, including the allegations included in the attachment labeled as "Comments 8a" and referenced in Paragraph 7.

10. NEISD admits that the following individuals are employed in the District's Community Education ("CE") Department: Executive Director Rebecca Stoughton Gossen; Operations Coordinator Patti Boren; CE Coordinator Carrie Smith; CE Training Specialist Mary Kay Alvarez; CE Specialist Landy Rodriguez; CE Specialist Iris Trevino; and Plaintiff, an Administrative Assistant to the Executive Director. NEISD denies the remaining allegations contained in Paragraph 8a of Plaintiff's Complaint, which includes an attachment labeled "Comments 8a."

11. NEISD denies the factual allegations contained in Paragraph 8b of Plaintiff's Complaint.

12. NEISD denies the factual allegations contained in Paragraph 8c of Plaintiff's Complaint.

13. NEISD denies the factual allegations contained in Paragraph 9 of Plaintiff's Complaint.

14. NEISD admits that Plaintiff filed a Charge of Discrimination with the EEOC on or about July 23, 2013; an Amended Charge of Discrimination on or about January 15, 2014; and a second Amended Charge on or about June 20, 2014. NEISD denies the factual allegations contained in the EEOC Charge of Discrimination documentation attached to Plaintiff's Complaint and referenced in Paragraph 10 of Plaintiff's Complaint.

15. NEISD denies that Plaintiff is entitled to any of the relief sought in the final section of Plaintiff's Complaint, including the relief requested in the attachment labeled "Comments 10."

II. AFFIRMATIVE DEFENSES

For further answer, and without waiving the foregoing, the District hereby asserts the following affirmative defenses to the causes of action pled in Plaintiff's Complaint:

1. Plaintiff has not been subjected to any adverse employment action.
2. Any and all decisions by NEISD regarding Plaintiff's employment have been made for legitimate, non-discriminatory, and non-retaliatory reasons.
3. Plaintiff has not been subjected to treatment different from that afforded to any other employee(s) in the District's Continuing Education Department, regardless of age.
4. Plaintiff has not be subjected to treatment different from that afforded to any other employee(s) in the District's Continuing Education based on disability.

5. NEISD affirmatively denies that any pattern or practice of age or disability discrimination exists.

6. NEISD affirmatively denies that Plaintiff has been subjected to any form of retaliation

7. Some or all of Plaintiff's claims may be barred by limitations.

8. Plaintiff has not suffered any lost wages or other economic damages.

9. To the extent that Plaintiff asserts any tort claims against the District, such claims are barred by the doctrine of sovereign and/or governmental immunity.

10. To the extent that Plaintiff asserts any claims for exemplary or punitive damages, such claims are precluded against NEISD because the District is a governmental entity. *See TEX. LABOR CODE § 21.2585(b).*

III. COUNTER-CLAIM

Counter-Plaintiff, complains of Plaintiff Annie L. Mzyk, hereinafter named as Counter-Defendant, as follows:

1. Counter-Plaintiff would show that this action has been brought in violation of Texas Education Code § 11.161, which provides that this Court may award costs and attorney's fees for filing a suit that is frivolous, unreasonable, and without foundation. As such, Counter-Plaintiff is entitled to dismissal of this action and recovery of its costs and reasonable attorneys' fees incurred in connection with the defense of this suit from Counter-Defendant.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants/Counter-Plaintiff North East Independent School District prays as follows:

1. That Plaintiff/Counter-Defendant's suit be dismissed with prejudice and that Plaintiff/Counter-Defendant take nothing by her Original Complaint on file herein;
2. That Defendants/Counter-Plaintiff North East Independent School District be awarded its attorneys' fees, costs of suit, and expenses in defending this lawsuit; and
3. That Defendants/Counter-Plaintiff North East Independent School District be awarded such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

SCHULMAN, LOPEZ & HOFFER, LLP

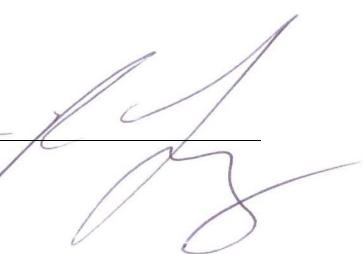
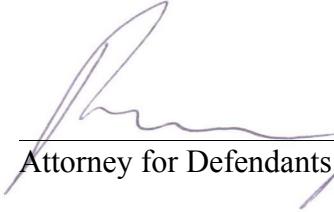


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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March 2015, the foregoing **Defendant's Original Answer, Affirmative Defenses, and Counter-Claim** has been served upon Plaintiff/Counter-Defendant *pro se* in this proceeding, via Certified Mail Return Receipt Requested, as follows:

Mrs. Annie L. Mzyk
3014 Renker Drive
San Antonio, Texas 78217



Attorney for Defendants